

95 FERC ¶ 61,089
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, and Linda Breathitt.

Public Utilities Commission of the
State of California

Docket No. RP00-241-003

v.

El Paso Natural Gas Company,
El Paso Merchant Energy-Gas, L.P.,
and El Paso Merchant Energy Company

ORDER ON REHEARING

(Issued April 18, 2001)

On March 28, 2001, the Commission issued in this proceeding an Order Denying Motion for Summary Disposition, Dismissing Complaint in Part, and Setting It for Hearing In Part (March 28, 2001 order).¹ In the March 28, 2001 order, the Commission, *inter alia*, set for hearing on an expedited basis the issue of whether El Paso Natural Gas Company (El Paso Pipeline), El Paso Merchant Energy-Gas, L.P. and El Paso Merchant Energy Company (jointly, El Paso Merchant) had market power and, if so, exercised it so as to increase natural gas prices at the California border. The Commission ordered the Presiding Administrative Law Judge (ALJ) to issue an Initial Decision (ID) within 60 days of the date of issuance of the March 28, 2001 order. In accordance with the schedule established by the ALJ, the hearing is scheduled to begin April 26, 2001.

On April 5, 2001, Southern California Edison Company (Edison) filed a request for immediate rehearing, asking the Commission to extend the date for the hearing from April 26, 2001 to the week of July 24, 2001, and also to extend the time for the ALJ to issue the ID from May 29, 2001, to August 27, 2001. Both El Paso Pipeline and El Paso Merchant filed answers opposing Edison's request for rehearing. As discussed below, the Commission grants rehearing in part.

¹Public Utilities Commission of the State of California v. El Paso Natural Gas Co., 94 FERC ¶ 61,338 (2001).

Positions of the Parties

Edison maintains that a trial-type hearing is necessary to develop a complete record in this proceeding. Edison also states that a trial-type hearing is necessary because none of the El Paso entities has responded to Edison's data requests. According to Edison, it would be extraordinarily difficult, if not impossible, to develop an adequate record under the deadline established by the Commission and the procedural schedule established by the ALJ. Because the contracts that are the focus of this proceeding will expire on May 31, 2001, Edison contends that no additional harm will result from an extension of the deadline imposed by the Commission. Pacific Gas and Electric Company (PG&E) filed an answer in support of Edison's request for immediate rehearing.

In their answers, El Paso Pipeline and El Paso Merchant argue that Edison has not justified a change to the unanimously agreed upon procedural schedule established by the ALJ. Moreover, El Paso Pipeline and El Paso Merchant assert that a further delay in the procedural schedule is unwarranted because there are numerous sources of publicly available data that would enable Edison to obtain information necessary to support its allegations. Edison filed a motion to strike El Paso Pipeline's answer, arguing that it is impermissible and inaccurate.

Discussion

Edison's request for immediate rehearing does not challenge the merits of the March 28, 2001 order, but rather, it is a request for an extension of time for completion of the hearing procedures ordered by the Commission. El Paso Pipeline and El Paso Merchant's opposition to Edison's request is based primarily on their desire to limit additional discovery. The Commission recognizes the legitimate but conflicting interests of the parties, but does not find sufficient cause to lengthen the hearing procedures to the extent sought by Edison. Accordingly, the Commission will grant rehearing in part and will allow the ALJ, at his discretion, to extend the deadline for the ID to 105 days after the date of the March 28, 2001 order, which is July 12, 2001. At his discretion, the ALJ also may adjust the procedural schedule established in his order issued April 4, 2001, in a manner that is consistent with this order.

The Commission orders:

Rehearing is granted in part, as discussed in the body of this order. The ALJ must issue an ID within 105 days from the date of the March 28, 2001 order and, at his discretion, may adjust the previously established procedural schedule in a manner consistent with this order.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.